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8 MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY
9

10 CITY OF HARDIN and TWO RIVERS
11 AUTHORITY,

12 Plaintiffs,

13 v.

14 STATE OF MONTANA and THE
15 MONTANA DEPARTMENT OF
CORRECTIONS,

16 Defendants.
17

Cause No. BDV-2007-955

**DEFENDANTS' MOTION FOR
PROTECTIVE ORDER**

18 Pursuant to Mont. R. Civ. P. 26(c), the Defendants seek a protective order in
19 response to Plaintiffs' discovery requests. As grounds for this motion, the
20 Defendants assert that the Amended Complaint requests a statutory interpretation,
21 which involves purely a question of law. Plaintiffs make no showing how the
22 information sought is reasonably calculated to lead to the discovery of admissible
23 evidence, since there are no factual issues involved in this case. Until this Court
24 decides whether the Amended Complaint sets forth a claim upon which relief can
25 be granted, as argued in the Defendants' Motion to Dismiss, Plaintiffs' discovery
26 requests are premature. This Court should issue a protective order:
27

1. Precluding the pending discovery completely on the ground that it seeks information that is not discoverable because it is neither relevant nor likely to lead to the discovery of relevant information, Mont. R. Civ. P. 26(b)(1),

or in the alternative,

2. Staying response to the pending discovery pending resolution of the defendants' motion to dismiss under Rule 12(b)(6).

The motion is supported by the accompanying brief.

Respectfully submitted this 18th day of January, 2008.

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By: 

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Defendants' Motion for Protective Order to be mailed to:

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DATED: 

Jan. 18, 2008

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Cause No. BDV-2007-955

**BRIEF IN SUPPORT OF
MOTION FOR PROTECTIVE
ORDER**

18 The Defendants respectfully submit the following Brief in Support of the
19 Motion for Protective Order.

20 **BACKGROUND**

21 On or about December 10, 2007, Plaintiffs filed a Complaint for Declaratory
22 and Injunctive Relief, asking this Court to declare and interpret two statutes (Mont.
23 Code Ann. §§ 7-32-2242 and -2243), as allowing them to contract with other states
24 and the federal government to bring convicted felons into Montana to serve their
25 sentences at the Two Rivers Detention Center in Hardin. The complaint was
26 amended on or about January 17, 2008, and seeks the same relief. Based on their
27 interpretation of these statutes, Plaintiffs ask the Court to enjoin Defendants from

1 interfering with these contracts in light of a recent Attorney General Opinion,
2 requested by Plaintiffs, which opines that Plaintiffs do not have statutory authority
3 to contract to bring inmates into this State. 52 Op. Atty. Gen. No. 4 (2007).

4 With the filing of their Complaint, Plaintiffs served their First Discovery
5 Requests, seeking the production of documents, and the identification of potential
6 witnesses and exhibits. A copy of the first discovery request is attached as
7 Exhibit 1. The discovery requests seek a copy of the Attorney General's file on the
8 opinion request, which has been copied and provided. Request for Production 1.¹
9 The information sought in the remaining discovery requests relate not to the
10 Attorney General's Opinion but rather to the Two Rivers Detention Center, the Two
11 Rivers Authority (which operates the detention center), or to the State's general
12 practice of placing prisoners in detention centers from January 1, 2005 forward.
13 The Attorney General's Office has provided Plaintiffs with an electronic copy of the
14 Attorney General's Opinion file for 52 Op. Atty. Gen. No. 4 (2007).

15 Thereafter, Plaintiffs submitted a second set of discovery requests, attached
16 as Exhibit 2. These requests plow further into the general subject of detention of
17 prisoners (Requests for Production 6, 7², 8, and 9 and Interrogatories 5, 6, and 7).
18 Plaintiffs requested information from the Attorney General, the Department of
19 Corrections, and the Governor's office, including "all documents that refer, relate,
20 or pertain to placement of inmates by the Department of Corrections with any
21 detention center within the State of Montana," dating back to January 1, 2000. For
22 that same period, Defendants are asked to identify by calendar month "the number

23
24 ¹ Interrogatory 1 and the second Request for Production, erroneously numbered by
25 Plaintiffs as Request for Production 3, also relate to the opinion file, which contains all
26 information relevant to the opinion that would be responsive to these requests.

27 ² Again in this set, Plaintiffs duplicate numbers, including two requests for production
numbered 7. The first Request for Production 7 seeks documents that relate to the
response to Interrogatory 5, discussed above. The second asks for information that is
included in the opinion file previously produced.

1 of Montana prisoners that were incarcerated at facilities outside the State of
2 Montana through arrangements made by the Department of Corrections, and (b) the
3 number of prisoners from jurisdictions other than Montana that were incarcerated at
4 facilities inside the State of Montana through arrangements reviewed or approved
5 by the Department of Corrections.” They also seek any records from the
6 Governor’s Office that relate to the Opinion (Request for Production 10), and any
7 records relating to meetings attended by personnel from the Attorney General’s
8 Office (Request for Production 11). Any records responsive to request for
9 Production 11 have already been produced in the Opinion file.

10 Meanwhile, the State has prepared and filed a dispositive Motion to Dismiss
11 the Amended Complaint for failure to state a claim upon which relief can be
12 granted. The Motion argues that the Amended Complaint presents only issues of
13 law, and that the statutes in question do not allow what Plaintiffs propose to do, so
14 that irrespective of any facts alleged or subsequently discovered, there is no legal
15 basis for relief.

16 Given that no issues of fact exist with respect to the proper interpretation of
17 the statutes in question, any discovery relating to the general subject of placement
18 of prisoners within the Department of Corrections generally or the Two Rivers
19 Detention Center specifically should be disallowed, since any facts developed in
20 response to such discovery will have no bearing whatsoever on the outcome of the
21 statutory construction claim presented in this lawsuit. At a minimum, given the
22 procedural posture of this case, this Court should issue a protective order delaying
23 Defendants’ obligation to comply with discovery until the Motion to Dismiss has
24 been resolved.

1 ARGUMENT

2 **PLAINTIFFS' DISCOVERY REQUESTS ARE NOT REASONABLY**
3 **CALCULATED TO LEAD TO THE DISCOVERY OF ADMISSIBLE**
4 **EVIDENCE BECAUSE THE COMPLAINT INVOLVES A QUESTION OF**
5 **STATUTORY INTERPRETATION.**

6 This case involves an interpretation of the statutes in Title 7, chapter 32,
7 part 22. The issue is aptly stated in Count I of the Amended Complaint:

8 Plaintiffs request that this Court construe Mont. Code Ann.
9 §§ 7-32-2242 and 7-32-2243, and declare the Parties' respective
10 rights, status and other legal relations under those statutes.

11 Amended Complaint, ¶ 29. The request for injunctive relief in Count II is
12 necessarily dependent on the legal viability of Count I.

13 Statutory construction involves purely a question of law. Ramsey v.
14 Yellowstone Neurological Assoc. P.C., 2005 MT 317, ¶ 18, 329 Mont. 489,
15 125 P.3d 1091. There are no facts alleged in the Amended Complaint that require
16 investigation or resolution, and the requested discovery could produce no facts that
17 would affect the proper construction of the statute. It is therefore appropriate for
18 this court to issue a protective order foreclosing discovery until the legal issue is
19 resolved. See Wenger v. Monroe, 282 F.3d 1068, 1077 (9th Cir. 2002) (court may
20 stay discovery when it is convinced that plaintiff is unable to state a claim for
21 relief); F.E. Trotter, Inc. v. Watkins, 869 F.2d 1312, 1318 (9th Cir. 1989) (where
22 defendants are entitled to dismissal based on legal defense of qualified immunity no
23 discovery is warranted) citing, Anderson v. Creighton, 483 U.S. 635 (1987).

24 Plaintiffs' claims for declaratory and injunctive relief are entirely dependent
25 on their interpretation of the relevant statutes. The Defendants have filed a motion
26 to dismiss because the statutes do not authorize what Plaintiffs propose, and
27 therefore, the Amended Complaint fails to state a claim upon which relief can be
granted. For purposes of the motion, the facts alleged in the Amended Complaint

1 are assumed to be true. There is simply no reason to conduct discovery, nor will
2 there ever be, given the particular allegations in the Amended Complaint.

3 For this reason, Defendants urges this Court to issue a protective order
4 staying discovery until the Motion to Dismiss is resolved. If the Motion to Dismiss
5 is granted, there will be no need for discovery. If the Motion to Dismiss is denied,
6 the Court can consider whether Plaintiffs' discovery requests are appropriate in
7 light of the foregoing objection.

8 Respectfully submitted this 18th day of January, 2008.

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27 DATED:  Jan. 18, 2008 